

lor Kent. *Weiser vs. Blackley et al.*, 2 Johns. Ch. Rep., 488; *Singston vs. Hobbs et al.*, 3 Johns. Ch. Rep., 124.

If, then, the facts, which it is proposed to bring to the notice of the court by a supplemental bill in the nature of a bill of review, were either known to the complainants in time to be used when the decree passed, (which refers, in England, to a period prior to the publication of the testimony,) or are facts of which they could have acquired the knowledge by the use of reasonable diligence, it would be contrary to the rule and practice of the court to grant the application. In this state, there is no formal rule for the publication of testimony, as in England. Here, objections to the evidence are taken and considered at the hearing of the cause. *Strike's case*, 1 Bland, 96.

And it is presumed, that if, at any time before the hearing, the parties should lay before the court a sufficient foundation, they would be permitted to take evidence discovered by them, after the return of the commission, and if the introduction of such evidence required the bill to be amended, an order for that purpose would be granted, or perhaps it might be amended, or a supplemental bill filed, without an order, and as a matter of course.

In this case, the petition does not state precisely when the newly discovered facts came to the knowledge of the complainants. It states, that they received the information, and acquired the knowledge of the facts relied upon, "before the hearing of the cause, but after it was at issue," but whether before or after the return of the commission is not stated. In either case, however, it is not doubted, that upon an application to the court at any time before the hearing, the complainants might have obtained an order remanding the commission to collect the newly discovered evidence, or if necessary, to amend their bill, so as to bring it within the issue. But the petition in this case alleges, that though the facts which the petitioners wish to present in their supplemental bill, came to their knowledge prior to the hearing, they were ignorant until after the decree passed, of the importance of averring and proving them, and for this reason, suppose they should now be permitted to do so.